

## **Reemployment Rights Enforcement**

Those of us in the active component are not involved in employment rights of Reservists and National Guardsmen very often. As some of these reserve component soldiers return from Operation Joint Endeavor and others prepare for Operation Joint Guard and a future of more frequent mobilizations, we are likely to encounter questions in this area more often. The starting point is the Uniformed Services Employment and Re-employment Rights Act (USERRA) which is codified at 38 USC 4301-4333. I have discovered, however, that this is an area where it is as important to know the system for enforcing these statutory rights as it is to know the law.

The Department of Labor has responsibility for enforcing USERRA and they do that through the Veterans Employment and Training Services (VETS) which takes complaints and investigates them. If the case warrants, DOL can refer the case to the Dept. of Justice. Under USERRA, a military member also may pursue relief by hiring private counsel and may obtain attorney fees and costs if they prevail. Currently, neither DOL nor DOJ will pursue any relief if the service member is represented by an attorney, including a judge advocate. This is why AR 27-3, para 3-6e(2) is so restrictive as to what judge advocates can do in regards to USERRA.

Not every re-employment problem needs to be referred directly to VETS. Sometimes the employer acts out of ignorance of the law and a little education can result in a quick remedy rather than literally making a Federal case out of it. This is the scenario where judge advocates are most tempted to simply call the employer, but where our professional credentials may be misconstrued as "representation" such as to preclude DOL / DOJ assistance later if the employer is truly recalcitrant. The better first step for these potentially simple cases is the National Committee for Employer Support of the Guard and Reserve (NCESGR).

The NCESGR is a DOD entity managed by the Assistant Secretary of Defense for Reserve Affairs. It is comprised of volunteer business executives, government representatives, educators, and military personnel who conduct education programs on USERRA and provide informal mediation of USERRA issues through their ombudsmen. A toll free call (1-800-336-4590) to the NCESGR can put the reservist in touch with the NCESGR ombudsman in his or her local area. The NCESGR has a working agreement with DOL-VETS that if the NCESGR ombudsman is unable to resolve the issue informally within a set period (3-10 days depending on the issue), the matter must be forwarded to the nearest VETS regional office.

Although not lawyers, the NCESGR ombudsmen are well aware of the provisions of USERRA and they usually have the additional advantage of being a fellow, local businessman and not a Federal employee unlike the VETS investigator. Frequently, the NCESGR ombudsman can resolve the employers misunderstandings regarding USERRA without angering the employer because the reservist/employee did not "call in the Feds". This serves the interests of both the reservist and the employer in the long-run. In the alternative, the NCESGR ombudsman can tactfully inform the employer that failure to comply with USERRA can result in a Federal agency investigation, litigation, adverse publicity, and money damages. Not surprisingly the national and state ESGR committees enjoy a high level of success. There is no cost to the soldier.

In short, before you as a judge advocate call the employer, call 1-800-336-4590. You do not have to abandon your comrade in arms; there is a system in place between NCESGR and DOL-VETS to do what you want to do for the reservist experiencing employment problems resulting from his or her military duty.